

Office of the Secretary, Interior

§ 4.1162

§ 4.1157 Determination by administrative law judge.

(a) The administrative law judge shall incorporate in his decision concerning the civil penalty, findings of fact on each of the four criteria set forth in 30 CFR 723.13 or 845.13, and conclusions of law.

(b) If the administrative law judge finds that—

(1) A violation occurred or that the fact of violation is uncontested, he shall establish the amount of the penalty, but in so doing, he shall adhere to the point system and conversion table contained in 30 CFR 723.13 and 723.14 or 845.13 and 845.14, except that the administrative law judge may waive the use of such point system where he determines that a waiver would further abatement of violations of the Act. However, the administrative law judge shall not waive the use of the point system and reduce the proposed assessment on the basis of an argument that a reduction in the proposed assessment could be used to abate other violations of the Act; or

(2) No violation occurred, he shall issue an order that the proposed assessment be returned to the petitioner.

(c) If the administrative law judge makes a finding that no violation occurred or if the administrative law judge reduces the amount of the civil penalty below that of the proposed assessment and a timely petition for review of his decision is not filed with the Board or the Board refuses to grant such a petition, the Department of the Interior shall have 30 days from the expiration of the date for filing a petition with the Board if no petition is filed, or 30 days from the date the Board refuses to grant such a petition, within which to remit the appropriate amount to the person who made the payment, with interest at the rate of 6 percent, or at the prevailing Department of the Treasury rate, whichever is greater.

(d) If the administrative law judge increases the amount of the civil penalty above that of the proposed assessment, the administrative law judge shall order payment of the appropriate amount within 30 days of receipt of the decision.

[43 FR 34386, Aug. 3, 1978, as amended at 59 FR 1488, Jan. 11, 1994]

§ 4.1158 Appeals.

Any party may petition the Board to review the decision of an administrative law judge concerning an assessment according to the procedures set forth in § 4.1270.

REVIEW OF SECTION 521 NOTICES OF VIOLATION AND ORDERS OF CESSATION

§ 4.1160 Scope.

These regulations govern applications for review of—

(a) Notices of violation or the modification, vacation, or termination of a notice of violation under section 521(a)(3) of the Act; and

(b) Orders of cessation which are not subject to expedited review under § 4.1180 or the modification, vacation, or termination of such an order of cessation under section 521(a)(2) or section 521(a)(3).

§ 4.1161 Who may file.

A permittee issued a notice or order by the Secretary pursuant to the provisions of section 521(a)(2) or section 521(a)(3) of the Act or any person having an interest which is or may be adversely affected by a notice or order subject to review under § 4.1160 may file an application for review with the Hearings Division, OHA, 801 North Quincy Street, Arlington, Va. 22203.

[43 FR 34386, Aug. 3, 1978, as amended at 67 FR 4368, Jan. 30, 2002]

§ 4.1162 Time for filing.

(a) Any person filing an application for review under § 4.1160 *et seq.* shall file that application within 30 days of the receipt of a notice or order or within 30 days of receipt of notice of modification, vacation, or termination of such a notice or order. Any person not served with a copy of the document shall file the application for review within 40 days of the date of issuance of the document.

(b) No extension of time will be granted for filing an application for review as provided by paragraph (a) of this section. If an application for review is not filed within the time period

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provided in paragraph (a) of this section, the application shall be dismissed.

[51 FR 16321, May 2, 1986]

§ 4.1163 Effect of failure to file.

Failure to file an application for review of a notice of violation or order of cessation shall not preclude challenging the fact of violation during a civil penalty proceeding.

§ 4.1164 Contents of application.

Any person filing an application for review shall incorporate in that application regarding each claim for relief—

- (a) A statement of facts entitling that person to administrative relief;
- (b) A request for specific relief;
- (c) A copy of any notice or order sought to be reviewed;
- (d) A statement as to whether the person requests or waives the opportunity for an evidentiary hearing; and
- (e) Any other relevant information.

§ 4.1165 Answer.

(a) Where an application for review is filed by a permittee, OSM as well as any other person granted leave to intervene pursuant to § 4.1110 shall file an answer within 20 days of service of a copy of such application.

(b) Where an application for review is filed by a person other than a permittee, the following shall file an answer within 20 days of service of a copy of such application—

- (1) OSM;
- (2) The permittee; or
- (3) Any other person granted leave to intervene pursuant to § 4.1110.

§ 4.1166 Contents of answer.

An answer to an application for review shall incorporate—

- (a) A statement specifically admitting or denying the alleged facts stated by the applicant;
- (b) A statement of any other relevant facts;
- (c) A statement whether an evidentiary hearing is requested or waived; and
- (d) Any other relevant information.

43 CFR Subtitle A (10–1–04 Edition)

§ 4.1167 Notice of hearing.

Pursuant to section 525(a)(2) of the act, the applicant and other interested persons shall be given written notice of the time and place of the hearing at least 5 working days prior thereto.

§ 4.1168 Amendments to pleadings.

(a) An application for review may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the administrative law judge upon proper motion.

(b) Upon receipt of an initial or amended application for review or subsequent to granting leave to amend, the administrative law judge shall issue an order setting a time for filing an amended answer if the judge determines that such an answer is appropriate.

§ 4.1169 Failure to state a claim.

Upon proper motion or after the issuance of an order to show cause by the administrative law judge, an administrative law judge may dismiss at any time an application for review which fails to state a claim upon which administrative relief may be granted.

§ 4.1170 Related notices or orders.

(a) An applicant for review shall file a copy of any subsequent notice or order which modifies, vacates, or terminates the notice or order sought to be reviewed within 10 days of receipt.

(b) An applicant for review of a notice shall file a copy of an order of cessation for failure timely to abate the violation which is the subject of the notice under review within 10 days of receipt of such order.

(c) If an applicant for review desires to challenge any subsequent notice or order, the applicant must file a separate application for review.

(d) Applications for review of related notices or orders are subject to consolidation.

§ 4.1171 Burden of proof in review of section 521 notices or orders.

(a) In review of section 521 notices of violation or orders of cessation or the modification, vacation, or termination thereof, including expedited review